IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 514 OF 2003

MRS. CATARINA MARIA MAGDALENA FERNANDES,MAPUSA GOA ....Petitioners

Versus

MR. MONICA FERNANDES,ASSAGAO,BARDEZ-GOA. ....Respondents

SHRI VALMIKI MENEZES,SHRI M.P. MULGAONKAR

Coram:- A.M.KHANWILKAR, J.

Date:- 21st November, 2003

Heard. The only question that was contes
ted before the Court below was whether t
he entire property under survey No.94/2
forms part of the estate of the deceased
, or whether the southern part of the pr
operty surveyed under no.94/2 was exclus
ively owned by Constancio Manuel Fernand
es. This aspect has been considered by t
he Court below after examining all the r
elevant matters on record and answered a
gainst the petitioner herein. The petiti
oner however, contends that the premise
on which the Court below has proceeded t
o answer the issue that the petitioner h
ad admitted that the interested parties
Monica Fernandes and others have got
right to the entire survey no.94/2, is a
n error apparent on the face of the reco
rd. It is in this context notice was iss
ued to the respondent.

2. Pursuant to notice the respondent has appeared and her learned counsel has de monstrated from the evidence, in particu lar the cross-examination of the petitio ner, wherein such admission has been rec orded. In cross-examination it is stated :-

"I admit that Monica and others are the co owners of this prop.....
.....
.....I did not mention to Talathi at that point of time that Monica and her sister has got right to this prop. It wo uld be correct to say that Monica and he r sister name should have been mentioned in the survey records of survey num.94/2 ....."

3. To get over this position learned cou nsel for the petitioner contends that th e above-referred quotations are not admi ssion with regard to the fact which aris es for consideration, but on reading the entire evidence as a whole, it would be evident that the petitioner has been contesting the position.

4. To my mind, no fault can be found wit h the conclusion reached by the Court b elow in answering the issue against the petitioner, having appreciated the entir e evidence in its totality. It is not possible to suggest that the finding and conclusion reached by the Court below i s either perverse or manifestly wrong. If that is so, this is not a case for

interference in exercise of writ jurisdi
ction.

5. Petition dismissed.

A.M.KHANWILKAR, J.